IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

BRINK FIDLER and JUSTIN FOX, **Plaintiffs,** **v.** **THE TWENTIETH JUDICIAL DISTRICT DRUG TASK FORCE a/k/a the METRO MAJOR DRUG ENFORCEMENT PROGRAM,** **Defendant.**	)))))))))))))	**No. 3:16-cv-02591** **Judge Crenshaw** **Magistrate Judge Holmes**

MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS THE AMENDED COMPLAINT

Defendant, the Twentieth Judicial District Drug Task Force ("Drug Task Force"), files this Memorandum in Support of its Motion to Dismiss the Amended Complaint. The Drug Task Force, as an "arm of the state," is immune in federal court from claims under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq*. As a result, Plaintiffs' claims must be dismissed.

STATEMENT OF THE CASE

In March 2014, the Drug Task Force was created by state law to "investigate, arrest, and prosecute those responsible for the sale and distribution of substantial quantities of illegal controlled substances within Davidson County, Tennessee." (Doc. No. 18, ¶ 3.) Plaintiffs Brink Fidler and Justin Fox are former employees of the Drug Task Force. (Doc. No. 18, ¶¶ 1–2.) Plaintiffs frequently worked in excess of forty-three hours per work period, and both Plaintiffs chose to document their excess work in the form of compensatory time. (Doc. No. 18, ¶ 23.)

In June 2015, the Drug Task Force ceased its operations. (Doc. No. 18, ¶ 21.) Plaintiff Fidler alleges that he had accrued 351 hours of compensatory time, and Plaintiff Fox alleges that he had accrued 480 hours of compensatory time. (Doc. No. 18, ¶ 23.) On September 2, 2015, the Drug Task Force Board of Directors received a memorandum from the District Attorney General's Director of Finance Operations stating that Plaintiffs were not entitled to payment for compensatory time because "both employees were functioning in top level management classifications." (Doc. No. 18, ¶ 29.) Accordingly, Plaintiffs were not paid for their unused compensatory time. Plaintiffs filed suit on September 27, 2016, alleging violations of the FLSA, seeking overtime back pay and liquidated damages. (Doc. No. 18, Prayer for Relief.)

ARGUMENT

I. THE DOCTRINE OF SOVEREIGN IMMUNITY APPLIES TO SUITS AGAINST THE STATE UNDER THE FLSA.

The Eleventh Amendment of the United States Constitution bars suits by private parties against the state in federal court. *See, e.g.*, *Alden v. Maine*, 527 U.S. 706, 712 (1999). A suit for monetary damages against an unwilling state is permitted only if: 1) Congress has unequivocally expressed its intent to abrogate the immunity; and 2) Congress has acted pursuant to a valid exercise of power. *See Nelson v. Miller*, 170 F.3d 641, 645 (6th Cir. 1999). A claim under the FLSA against the State of Tennessee satisfies the first element of this test, but not the second.

Congress amended the FLSA in 1974 to add a clear statement of congressional intent to abrogate the states' sovereign immunity—the definition of "employer" was broadened to include "the government of a State or political subdivision thereof [or] any agency of . . . a State, or a political subdivision thereof." *See* 29 U.S.C. § 203(x). In *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 74–75 (1996), and *Alden v. Maine*, 527 U.S. 706, 712 (1999), the Court held that the power of Congress to abrogate a state's Eleventh Amendment immunity is not unlimited, but instead depends on the particular purpose for which Congress attempts to take away the state's immunity. Courts have held that Congress cannot abrogate a state's sovereign immunity based solely on the regulation of interstate commerce or Section 5 of the Fourteenth Amendment. *Alden*, 527 U.S. at 712; *Michigan Corr. Org. v. Michigan Dep't of Corr.*, 774 F.3d 895, 902 (6th Cir. 2014). As a result, state employees cannot litigate claims against a state that has not consented to suit for violations of the FLSA. *Alden*, 527 U.S. at 712; *Wilson-Jones v. Caviness*, 99 F.3d 203, 206 (6th Cir. 1996).

The State of Tennessee has not waived sovereign immunity with respect to the FLSA. Waiver of sovereign immunity can occur in two circumstances: 1) when a state voluntarily invokes federal court jurisdiction, *Gunter v. Atl. Coast Line R. Co.*, 200 U.S. 273, 284 (1906), or 2) when the state makes a "clear declaration" of intent to submit to federal court jurisdiction, *Coll. Sav. Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 676 (1999). The State of Tennessee does not invoke federal court jurisdiction in this case and has never made a "clear declaration" to submit to federal jurisdiction in FLSA cases. *S & M Brands, Inc. v. Cooper*, 527 F.3d 500, 507 (6th Cir. 2008); *Lawson v. Univ. of Tenn.*, No. E1999-02516-COA-R9-CV, 2000 WL 116312, at *3–4 (Tenn. Ct. App. Jan. 28, 2000) (Doc. No. 16-1). Thus, the Eleventh Amendment bars FLSA claims against the state in this Court.

II. THE DRUG TASK FORCE IS AN "ARM OF THE STATE."

The Drug Task Force is an "arm of the State" to which the doctrine of sovereign immunity applies. In *Ernst v. Rising*, 427 F.3d 351 (6th Cir. 2005), the Sixth Circuit laid out four factors to help determine whether an entity is an "arm of the State" protected by the doctrine of sovereign immunity: (1) the State's potential liability for a judgment against the entity; (2) the language by which state statutes and state courts refer to the entity, and the degree of state control and veto power over the entity's actions; (3) whether state or local officials appoint the board members of the entity; and (4) whether the entity's functions fall within the traditional purview of state or local government. *Id.* at 359.

A. A Judgment Against the Drug Task Force Could Take Funds from the Coffers of the State.

A judgment against the Drug Task Force would result in potential liability for the State—albeit indirectly. According to the Amended Complaint, the "Drug Task Force was a wholly self-sustaining and self-funded unit, with all expenses, including overtime compensation, paid out of the proceeds from drug arrests." (Doc. No. 18, ¶ 18.) However, pursuant to the Inter-Agency Agreement, "[i]n the event the task force ceases to operate or to exist, any property which the task force owns shall be sold and the proceeds distributed between the Office of the District Attorney General for the 20th Judicial District and the Metropolitan Police Department." (Doc. No. 14-1, ¶ VII.d). Plaintiffs claim that the Drug Task Force was being "closed." (Doc. No. 18, ¶ 21.) When the Drug Task Force ceases to exist, a portion of its remaining property will be transferred to the Office of the District Attorney General for the Twentieth Judicial District, which is a state entity. *See Lee v. Knox Cty. Sheriff's Office*, No. 3:05-CV-571, 2006 WL 1075204, at *3 (E.D. Tenn. Apr. 21, 2006) (citing TENN. CONST. art. VI, § 5; Tenn. Code Ann. § 16-2-506) (Doc. No. 20-1). As a result, any judgment against the Drug Task Force would be paid from funds that would otherwise be property of the State.

B. State Courts Refer to the Drug Task Force as a State Entity.

Tennessee courts have regularly held that drug task forces are state agencies. *See Willis v. Neal*, No. 1:04 CV 305, 2006 WL 270288, at *13 (E.D. Tenn. Feb. 1, 2006) ("[S]tatutory provisions lead to the conclusion that the Task Force is a state entity, and its members are state employees . . . ."), *order vacated in part on reconsideration*, No. 1:04-CV-305, 2006 WL 1129388

(E.D. Tenn. Apr. 24, 2006), *aff'd*, 247 F. App'x 738 (6th Cir. 2007);[1] *Emerson v. Madison Cty., Tenn.*, No. 94-1266, slip op. at 3 (W.D. Tenn. Mar. 13, 1995) ("Plaintiffs maintain that it is unclear whether the Drug Task Force is an agency of the State of Tennessee entitled to Eleventh Amendment protection. The court disagrees.").

Additionally, under Tennessee statutes, members of Drug Task Forces are considered state employees as long as they are engaged in activities related to the task force. Tennessee Code Annotated § 8-7-110(c) provides, "[I]t shall be conclusively deemed that the individual was not an employee, agent or servant of a local government but was a volunteer to the state." Tennessee Code Annotated § 8-42-101(3)(C) states: " 'State employee' . . . includes . . . a person designated by the district attorney general of each judicial district as a member of a judicial district task force relating to the investigation and prosecution of drug cases."

C. The District Attorney General is a State Official, and He Exercises Substantial Control Over the Drug Task Force.

The Board of Directors of the Drug Task Force was partially controlled by state government officials. The District Attorney General served as the chairperson of the Drug Task Force (Doc. No. 14-1, ¶ V.a.), and district attorneys general are state officials. *See* Tenn. Code Ann. § 8-7-101 *et seq.* (Title 8 governs "Public Officers and Employers," and Chapter 7 defines "District Attorneys General"); *see also Boone v. Cerny*, No. 3:11-CV-158, 2011 WL 3566840, at *2 (E.D. Tenn. Aug. 15, 2011) ("Defendant General Nichols, the district attorney general of Knox County, is a state employee and state official.") (Doc. No. 20-2); *Sentell v. State*, No. 3:12-CV-593, 2013 WL 3820021, at *2 (E.D. Tenn. July 23, 2013) ("District Attorneys General in Tennessee are state officials.") (Doc. No. 20-3).

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[1] The Court's reconsideration did not disturb the holding that Drug Task Forces are state entities. *See Willis v. Neal*, No. 1:04-CV-305, 2006 WL 1129388, at *2 (E.D. Tenn. Apr. 24, 2006) (reconsidering only the denial of summary judgment as to Plaintiff's state law false arrest claim against the Defendant in his individual capacity).

The District Attorney General's influence over the Drug Task Force was pervasive. As the Chairman of the Drug Task Force, he provided "consultation, legal advice and guidance" to the board of directors as was necessary "to complete task force duties." (Doc. No. 14-1, ¶ V.b.) He was one of two individuals responsible for selecting the Director of the Drug Task Force, and one of two individuals capable of approving termination of the Director. (Doc. No. 14-1, ¶ V.c.) In the event that the Drug Task Force was terminated, the Inter-Agency Agreement permitted the Drug Task Force's property to be sold and the proceeds distributed to the Office of the District Attorney General. (Doc. No. 14-1, ¶ VII.d.)

Furthermore, the Director of Finance Operations for the Office of the District Attorney General, Mr. Michael Brook, was highly involved in the decisions regarding Plaintiffs' employment and compensation. (Doc. No. 18, ¶¶ 27, 29–30.) As an employee of a state agency, Mr. Brooks' actions should be attributed to the state agency. Mr. Brook asked Plaintiff Fidler to submit a letter of resignation after the Drug Task Force ceased operations. (Doc. No. 18, ¶ 27.) Mr. Brook wrote a report entitled "FLSA Investigation" regarding Plaintiffs' eligibility for payment for accrued compensatory time. (Doc. No. 18, ¶ 30.) Mr. Brook made the decision that Plaintiffs were not eligible for payments for Plaintiffs' accrued compensatory time. (Doc. No. 18, ¶ 29.)

In summary, the Amended Complaint evidences the fact that state officials and employees working for a state agency had substantial influence over the direction of the Drug Task Force and made significant decisions regarding employment and compensation.

D. The Drug Task Force Addressed Statewide Law Enforcement Issues.

The Inter-Agency Agreement provided the Drug Task Force's law enforcement officers with jurisdiction "within the state of Tennessee pursuant to T.C.A. 8-7-110 (b)." (Doc. No. 14-1,

¶ IV.b.) Section 8-7-110(b) provides drug task force officers with "the same rights, powers, duties, and immunities statewide as such officer has within the officer's own judicial district . . . provided, that investigations conducted outside the officer's jurisdiction originated within the officer's own jurisdiction." In addition to this broad, statewide jurisdiction enjoyed by all officers, the Inter-Agency Agreement also required that "[t]he task force will, at a minimum, provide four state task force agents." (Doc. No. 14-1, ¶ V.f.) The allowance of statewide jurisdiction and the requirement of state task force agents indicates that the Drug Task Force was involved in statewide law enforcement.

The Task Force's objective to "ferret out, identify, arrest and prosecute those responsible for the sale and distribution of substantial quantities of controlled substances," (Doc. No. 14-1, ¶ I), cannot be accomplished solely within the boundaries of the Twentieth Judicial District. Major trafficking operations do not occur within a single county—it requires coordination of officers and intelligence information across the state. Thus, the Drug Task Force was engaged in a statewide law enforcement issue.

Because this factor and the three previously addressed factors indicate that the Drug Task Force should be considered an "arm of the state," the Drug Task Force is entitled to sovereign immunity with respect to Plaintiffs' FLSA claims.

CONCLUSION

For these reasons, Plaintiffs' claims against the Twentieth Judicial District Drug Task Force should be dismissed under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

Respectfully submitted**,**

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2017 a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

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